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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,094	04/18/2001	James M. Sheppard JR.	3129	8428

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EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/837,094	SHEPPARD, JAMES M.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on May 24, 2004, has been entered. Claims 1 – 20 and 28 have been cancelled. Claim 21 has been amended. Therefore, the pending claims are 21 – 27.

2. The 35 USC 112 1st paragraph rejection set forth in section 7 of the previous Office Action is withdrawn since the Applicant has removed the phrased in the claim which was not supported by the disclosure.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 21 – 28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 – 36 of copending Application No. 09/747,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because the jacquard loom recited in 09/747,529 and the dobby loom recited in this application can be used to produce the same simple fabric construction.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

5. Claim 21 is objected to because of the following informalities: the phrase "shearing said side one side" is grammatically awkward. Appropriate correction is required.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 21 – 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hobson (4,259,994) in view of Carpenter et al. (5,983,952) for the reasons of record.

8. Claims 21 – 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sherrill et al. (3,721,273) in view of Applicant's Admission (Specification, page 2) for the reasons of record.

Response to Arguments

9. Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive. The Applicant argues that Hobson fails to teach blooming as is known in the art (response, pages 4 – 5). The Applicant bases this on the fact that shearing would not qualify as "blooming" as is known in the art. Further, the Applicant defines blooming as "an operation … that substantially increase the bulk of the tow by separating the and deregistering the crimp." Further review of the term "blooming" defines the operation as a process that allows packaged fibers to expand after opening a bale of fiber (see Fairchild's Dictionary of Textiles, pg 60). However, it is noted that both of these definitions do not refer to the blooming of yarn structures

explicitly, but instead to the opening of bales and tows, or large groupings, of fibers. Therefore, the term based on how it is used in the art does would refer to generally the opening or expanding of a group of tightly packed or bunched fibers. Hence, the shearing step taught by Hobson, which is a mechanical step, would inherently open the tightly twisted loop yarns to some degree since the twisted loop yarns are cut and allowed to relax. Also, Hobson would inherently comprise bloomed fibers since the towel is a velour towel, which has a thick plush pile structure. Therefore, the rejection is maintained since blooming is based on its broadest reasonable interpretation and since the shearing step would qualify as a mechanical step.

10. Additionally, the Applicant argues that pile height variations are influenced by the changing direction, i.e., a yarn changing direction from the front face to the back face and is not directly related to the shearing step (response, page 5). While, switching from front face to back face influences the pile height of the yarn, the height of the pile yarns in the finished product is controlled by the height to which the pile yarns are sheared to after the fabric has been woven. Thus, the shearing step is related to the pile height in the finished product. Further, Hobson discloses that only one side of the fabric can be sheared and that minimizing the amount which is sheared from the fabric creates less waste. Therefore, it would have been obvious to one of ordinary skill in the art to minimize the amount of height sheared from the pile yarns to produce the least amount of wasted possible while still producing a velour surface with a smooth even pile structure. Thus, the rejection is maintained.

11. With respect to the rejection based on Sherrill et al. the Applicant argues that the prior art does not produce a border by weaving different color yarns. However, this limitation is a method limitation which is not given patentable weight in product claims unless it produces a

different structure in the final product. In this case, the final product has a different color border. Regardless of whether the border is produced by weaving a different color yarn or weaving a fabric and then changing the color of the yarns in the border region, the final product would still be a woven terry cloth towel with a border section having a color different from the center section in either process. Thus, the method limitations do not create a structurally different final product and have no been given patentable weight. Hence, the printed design taught by Sherrill et al. would create the two different colored sections since printing the fabric would change the color of the yarns in the woven structure. Therefore, choosing the color scheme in the final product would just be based on the design choice of the person producing the towel and what designs are currently popular in the towel market. And as shown in the figures of Sherrill et al. it is know to have towels with borders having a different design than the center section. Thus, the rejection is maintained.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
July 29, 2004

CHERYL A. JUSKA
PRIMARY EXAMINER